IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2690 OF 2003

Vijaykumar Sumbly. ...Petitioner.
Vs.
Union of India & Ors. ...Respondents.

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Mr. Jaideep Mitra i/b. J. A. Shah & Asso. for the Petitioner.
Mr. D. A. Dubey with Mr. Y.R. Mishra for Respondent No.1.
Mr. S.K. Talsania i/b. S. Udeshi & Co. for Respondent No.2.

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CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

September 28, 2004.

P.C.:

In pursuance to the show cause notice issued by this Court, reply-affidavit has been filed. In the affidavit filed by Mr. A. K. Rai on 7th September 2004, it was stated that the petitioner was considered for promotion from Scale III to Scale IV in the promotion exercise carried out in the year 2000. The Selection Committee, however, did not select the petitioner. The learned counsel for respondent No.2 has filed another affidavit dated 28th September 2004 in which it is mentioned that the averments made in para 5 of the affidavit dated 7th September 2004 are not accurate and para 2 of the affidavit reads as under:

"I have filed Affidavit dated 7th September 2004 in reply

to the Writ Petition. In the said Affidavit, I have submitted that the Petitioner was actually considered for promotion from Scale III to Scale IV in the promotion exercise carried out in the year 2000 wherein, he was not selected. The said statement was made on the basis that there were 35 vacancies and 35 candidates were promoted on substantive basis. As per the sealed cover procedure laid down under Dena Bank (Officers') Service Regulations, 1979, when suitability of an Officer for his promotion are kept in sealed cover, the vacancy is filled only in an officiating capacity. Since, in the instant case all the 35 vacancies were filled on substantive basis, I presumed that the petitioner was not selected. I say that at that time all I was able to locate was the result dated 29th July 2000 signed by the members of the Departmental Promotion Committee (DPC) for the promotion exercise from MMG Scale III to SMG Scale IV and the name of the petitioner did not appear in the said list. However, now I have been able to locate the entire proceedings of the DPC and it appears that the findings of the DPC in respect of the petitioner and five others were kept under sealed cover in view of the pendency of the disciplinary proceedings against them. Since the petitioner was not exonerated in the disciplinary proceedings, the sealed cover was not opened. In the circumstances, it would be inaccurate till the sealed cover is opened to say that the petitioner was not selected."

The learned counsel for the petitioner has drawn our attention to the order of the Disciplinary Authority who has found the ESO guilty of allegation Nos.2 and 4. The Deputy General Manager (CAD) & Appellate Authority vide his order dated 21st August 2002 found the petitioner guilty of allegation No.4 only. In this view of the matter, we remit the matter to the disciplinary authority only with regard to allegation No.4 and we direct the

disciplinary authority to dispose of the enquiry as expeditiously as possible in any event within six weeks from today. In case an appeal is preferred against the order of the disciplinary authority, the same shall also be decided expeditiously. The selection of the petitioner for the year 2000 shall remain in sealed cover until the decision of the disciplinary enquiry. The writ petition is accordingly disposed of.

Certified copy expedited.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.